

Explanatory Memorandum to the Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022.

Julie James
Minister for Climate Change
9 November 2022

PART 1

1. Description

These Regulations make saving and transitional provisions in relation to the Renting Homes (Wales) Act 2016 (“the 2016 Act”).

On the date that the 2016 Act comes into force (1 December 2022) existing tenancies and licences in Wales will convert into occupation contracts (with certain exceptions as set out in Schedule 2 to the 2016 Act) and will be subject to the provisions of the new legislative regime.

The primary purposes of these regulations are:

- to ensure that where particular processes relating to existing tenancies and licences (for example possession proceedings) have already been commenced on the date at which the 2016 Act comes into force, these processes are able to be concluded in accordance with the provisions of the legislative framework under which they were initiated;
- to ensure that certain entitlements which exist in particular types of current tenancies (for example a request for improvement) are preserved so that the parties to these existing tenancies are treated fairly when their tenancy undergoes conversion into an occupation contract, with the correct balance being struck in respect of both parties’ rights and obligations; and
- to confirm that certain provisions relating to temporary accommodation will not apply until 12 months after the coming into force of the 2016 Act.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

No specific matters have been identified.

Schedule 12 to the 2016 Act (as amended by the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022) sets out the arrangements for tenancies and licences currently in existence which will convert into occupation contracts when the 2016 Act comes into force.

Whilst the purpose of Schedule 12 is to alter the automatic effect of conversion on certain tenancies and licences to provide specific outcomes upon conversion, the purpose of these Saving and Transitional regulations is to provide temporary arrangements for certain tenancies and licences which have aspects of current legislation applying to them upon conversion.

3. Legislative background

The powers enabling these regulations to be made are contained in section 255 of the 2016 Act.

These regulations are being made under the negative procedure.

4. Purpose and intended effect of the legislation

Part 1 provides that in situations where a landlord has initiated possession proceedings, generally by serving a relevant notice, but those proceedings have not been concluded by the date on which the 2016 Act comes into force, those proceedings will be concluded in accordance with the requirements set out in the legislation under which they were initiated, or in accordance with section 206 of the 2016 Act. Further, and where applicable, these regulations provide that any issued notice will expire within the period prescribed;

Part 2 provides that where a tenant has requested a review of a social landlord's decision to extend or end a trial period in an existing tenancy, but that review process has either not yet begun, or been concluded, it will be completed in accordance with the requirements of Paragraph 4 of Schedule 4 of the 2016 Act ("Landlord's review of decision to extend introductory tenancy");

Part 3 provides that deposits paid under current protection arrangements will apply to converted occupation contracts, and any proceedings which relate to the repayment of a tenancy deposit which began before the coming into force of the 2016 Act may continue beyond that date (and will not have to begin anew after the coming into force date);

Part 4 provides that where a tenant with a type of tenancy that allows them to seek a determination of rent has requested such a determination, but that process has not been completed on the date that the 2016 Act comes into force, it may continue beyond that date;

Part 5 provides that where a tenant has sought the approval of their landlord to make improvements or repairs to a dwelling for which they are entitled to reimbursement or compensation from the landlord, that entitlement will continue to exist and the landlord will remain liable after the tenancy has converted into an occupation contract;

Part 6 provides that any current rent protection provisions that apply to protected shorthold tenancies or restricted contracts under Part 3 and Part 5 of the Rent Act 1977 will continue to apply to the relevant converted occupation contract;

Part 7 provides that the exclusion of an assured agricultural occupancy (AAO) from comprising part of a bankrupt's estate will continue following the conversion of that AAO into an occupation contract;

Part 8 provides that, on the date on which the provisions of the 2016 Act come into

force, any tenancy or licence provided by a third party landlord on behalf of a local authority in exercise of the authority's homelessness duties will not be an occupation contract under part 4 of Schedule 2 of the 2016 Act until 12 months after the coming into force date of the 2016 Act (unless the landlord gives the person with whom the tenancy or licence is made notice that it is an occupation contract); and

Part 9 provides for local housing allowance determinations made in relation to an assured tenancy to be deemed the rent payable under a relevant occupation contract.

5. Consultation

As these Regulations are technical in nature and are not intended to make changes to Welsh Government policy a formal public consultation did not take place.

6. Regulatory Impact Assessment

The transitional and savings provisions made by these Regulations are not expected to alter the policy (or its impact) in any significant way. As such, these Regulations are considered to make technical provision rather than affecting its purpose or effect and, consequently, no RIA has been produced to accompany these Regulations. This is in line with the second exception set out at paragraph 3.2 of the Welsh Ministers' Regulatory Impact Assessment Code for subordinate legislation.